

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-210336

DATE: January 13, 1983

MATTER OF: The Helicon Group, Ltd.

DIGEST:

Ten-day period for filing protests after basis for protest is known or should have been known by protester is not tolled by protester's subsequent efforts to convince agency that the sole-source award of a contract to another firm was improper.

The Helicon Group, Ltd. protests the sole-source award of a contract by the Federal Emergency Management Agency for an evaluation study of the National Flood Insurance Program. Helicon contends that because it and others had the qualifications to perform the study, there was no valid basis to support the agency's determination that the awardee was uniquely qualified. For the reasons discussed below, this protest is dismissed as untimely under our Bid Protest Procedures, 4 C.F.R. § 21.2 (1982).

Helicon submitted with its protest correspondence which indicates the agency announced its intention to make a sole-source award in the May 14, 1982 issue of the Commerce Business Daily and that Helicon telephoned the agency on May 19 to protest. Subsequently, there were several exchanges of correspondence. While it is not clear whether the agency considered Helicon's objections as a formal protest, by letters dated August 25 and September 22 the agency made it clear it did not intend to disturb the award as a result of Helicon's objections. Although on September 8 and again on October 1 Helicon advised the agency that it was protesting to our Office, it did not actually do so until December 28, 1982.

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Section 21.2(b)(1) of our Procedures requires protests of other than solicitation improprieties to be filed within 10 working days after the protester knew or should have known of the basis for the protest. During this 10-day period, the protester must obtain whatever written or oral information or advice it needs and file its protest if it so desires. This 10-day period is not tolled by continuing efforts to convince the agency that its award was improper. See Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD 38. Thus, Helicon's protest here, which was filed months after it knew the facts which formed the basis for its protest, is untimely.

Moreover, even if Helicon's telephone call and letters could be treated as a protest to the agency, the protest to our Office would be untimely under section 21.2(a) of our Procedures because it was not filed within 10 working days of Helicon's knowledge of the agency's denial of its protest. At the latest, this occurred upon Helicon's receipt of the agency's reply of September 22 which clearly indicates the agency intended to take no further action on this matter.

Consequently, Helicon's protest will not be considered on its merits.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel